

PUBLIC EMPLOYMENT RELATIONS (EXCERPT)
Act 336 of 1947

423.202a Allegation of strike by public school employees or lockout by public school employer; notice to commission; hearing; fines; deduction and disposition of fines; collection proceedings; fines additional to other penalties; injunction; reimbursement prohibited; "public school employee" defined.

Sec. 2a. (1) If a public school employer alleges that there is a strike by 1 or more public school employees in violation of section 2, the public school employer shall notify the commission of the full or partial days a public school employee was engaged in the alleged strike.

(2) If a bargaining representative alleges that there is a lockout by a public school employer in violation of section 2, the bargaining representative shall notify the commission of the full or partial days of the alleged lockout.

(3) Within 60 days after receipt of a notice made pursuant to subsection (1) or (2), the commission shall conduct a hearing to determine if there has been a violation and shall issue its decision and order. A hearing conducted under this subsection is separate and distinct from, and is not subject to the procedures and timelines of, a proceeding conducted under section 6.

(4) If, after a hearing under subsection (3), a majority of the commission finds that 1 or more public school employees engaged in a strike in violation of section 2, the commission shall fine each public school employee an amount equal to 1 day of pay for that public school employee for each full or partial day that he or she engaged in the strike and shall fine the bargaining representative of the public school employee or employees \$5,000.00 for each full or partial day the public school employee or employees engaged in the strike.

(5) If, after a hearing under subsection (3), a majority of the commission finds that a public school employer instituted a lockout in violation of section 2, the commission shall fine the public school employer \$5,000.00 for each full or partial day of the lockout and shall fine each member of the public school employer's governing board \$250.00 for each full or partial day of the lockout.

(6) If the commission imposes a fine against a public school employee under subsection (4) and the public school employee continues to be employed by a public school employer, the commission shall order the public school employer to deduct the fine from the public school employee's annual salary. The public school employee's annual salary is the annual salary that is established in the applicable contract in effect at the time of the strike or, if no applicable contract is in effect at the time of the strike, in the applicable contract in effect at the time of the decision and order. However, if no applicable contract is in effect at either of those times, the public school employee's annual salary shall be considered to be the annual salary that applied or would have applied to the public school employee in the most recent applicable contract in effect before the strike. A public school employer shall comply promptly with an order under this subsection. A deduction under this subsection is not a demotion for the purposes of Act No. 4 of the Extra Session of 1937, being sections 38.71 to 38.191 of the Michigan Compiled Laws.

(7) The commission shall transmit money received from fines imposed under this section, and a public school employer shall transmit money deducted pursuant to an order under subsection (6), to the state treasurer for deposit in the state school aid fund established under section 11 of article IX of the state constitution of 1963.

(8) If the commission does not receive payment of a fine imposed under this section within 30 days after the imposition of the fine, or if a public school employer does not deduct a fine from a public school employee's pay pursuant to an order under subsection (6), the commission shall institute collection proceedings.

(9) Fines imposed under this section are in addition to all other penalties prescribed by this act and by law.

(10) A public school employer may bring an action to enjoin a strike by public school employees in violation of section 2, and a bargaining representative may bring an action to enjoin a lockout by a public school employer in violation of section 2, in the circuit court for the county in which the affected public school is located. A court having jurisdiction of an action brought under this subsection shall grant injunctive relief if the court finds that a strike or lockout has occurred, without regard to the existence of other remedies, demonstration of irreparable harm, or other factors. Failure to comply with an order of the court may be punished as contempt. In addition, the court shall award court costs and reasonable attorney fees to a plaintiff who prevails in an action brought under this subsection.

(11) A public school employer shall not provide to a public school employee or to a board member any compensation or additional work assignment that is intended to reimburse the public school employee or board member for a monetary penalty imposed under this section or that is intended to allow the public school

employee or board member to recover a monetary penalty imposed under this section.

(12) As used in this section, “public school employee” means a person employed by a public school employer.

History: Add. 1994, Act 112, Eff. Mar. 30, 1995.

Constitutionality: That portion of MCL 423.202a(4) imposing automatic mandatory fines on bargaining representatives for strikes by their membership was struck down by the Wayne County Circuit Court in Michigan State AFL-CIO, et al v Michigan Employment Relations Commission (Docket Nos. 94-420652-CL & 94-423581-CL) on March 2, 1995. The Court found that this proviso violated due process under U.S. Const. Am XIV or Const. 1963, art 1, § 17. The Court also struck down that portion of MCL 423.202a(10) which required circuit courts, upon application by a party, to issue injunctions against strikes or lockouts without considering traditional equity factors. The Court concluded that this provision violated the separation of powers under Const 1963, art 3, § 2. No appeal was taken from these findings. Michigan State AFL-CIO v. MERC, 212 Mich. App. 472, 478. (1995)

Popular name: Public Employment Relations